Supreme Court, U.S.
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No. 01-375

IN THE

Supreme Court of the United States

YALE TIFFANY KOZINSKI,

Petitioner

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

REPLY TO BRIEF IN OPPOSITION

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Cases

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Robert L. Stern, et al., Supreme Court Practice (7th ed. 1993).....1

1. The Court has held that its "jurisdiction does not depend on citation to book and verse." *Eddings v. Oklahoma*, 455 U.S. 104, 113-14 n.9 (1982) (citing *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928)); *see also Taylor v. Kentucky*, 436 U.S. 478, 482 n.10 (1978) (an objection invoking "fundamental principle[s] of judicial fair play" should have "sufficed to alert the trial judge to petitioner's reliance on due process principles"). The Court has exercised particular latitude in criminal cases where the "criminal appeal papers are prepared and pressed by persons unlearned in the law." Robert L. Stern, et al., Supreme Court Practice (7th ed. 1993) § 3.16, at 121 (citing *Durley v. Mayo*, 351 U.S. 277, 282 n.3 (1956); *Price v. Johnston*, 334 U.S. 266, 292 (1948); *Tomkins v. Missouri*, 323 U.S. 485, 487 (1945)). In *Pollard v. United States*, 352 U.S. 354 (1957), the Court permitted counsel to present questions the Court might well have considered not preserved "had petitioner been represented by counsel in the courts below." *Id.* at 359; *see also* Stern, *supra*, § 3.16, at 121.

Petitioner, who at the time of the offense was a high school student, handled all state court proceedings pro se; he presented evidence, conducted cross-examination and raised objections at trial; on appeal, he prepared all briefs and papers, and presented oral argument. Throughout the state court proceedings, he pressed his claim as a matter of due process, and cited federal caselaw in his Reply Brief on appeal, at oral argument before the Superior Court Appellate Division, and in his Petition for Rehearing. He therefore fairly presented the federal question in the courts below.

2. *Nash v. Florida Industrial Commission*, 389 U.S. 235 (1967), held that where a state supreme court has previously indicated that it apparently lacked jurisdiction to review rulings of the intermediate appellate court in certain types of cases (unless certified by the latter court on its own motion), the intermediate court is regarded as the highest state court where a decision could be had.

In *Whittaker v. Superior Court*, 438 P.2d 358 (Cal. 1968), the California Supreme Court held that it had no jurisdiction to review decisions of the Superior Court or Appellate Department. The only exception is where the Court of Appeal orders the case transferred to itself upon certification of the Superior Court or because the Court of Appeal determines that such transfer "appears necessary to secure uniformity of decision or to settle important question of law." *Id.* at 365 (quoting Cal. Civ. Proc. Code § 988t (current § 911)) (citations omitted).

Respondent argues that petitioner should have sought such certification pursuant to Cal. R. of Ct. 63(a), but such certification was plainly unavailable in this case. By its terms, the certification rule permits transfer of the case to the Court of Appeal only where "the transfer appears necessary to secure uniformity of decision or to settle important questions of law." Cal. Civ. Proc. Code § 911 (West Supp. 2000) (quoted in Brief in Opposition at 5). The question presented by petitioner was settled by the California Supreme Court in *People v. Carlucci*, 590 P.2d 15 (1979). Since that opinion, every single published opinion in California has followed *Carlucci*. *See generally* Petition for Certiorari at 16-18 (discussing California caselaw). The law in California is neither unsettled nor lacking in uniformity. Petitioner therefore did not have a good faith

basis for petitioning the Court of Appeal to transfer the appeal to itself, as there was no basis in California law for such a transfer.

3. Respondent argues that the absence of the prosecutor does not invariably result in a denial of due process because, under *Carlucci*, a trial court may request that a prosecutor be present when it "determines that it cannot confine itself to the traditional judicial role without the prosecutor's participation." Brief in Opposition at 12. However, when municipal judges of San Bernardino County insisted that they could not perform their judicial functions in the absence of a prosecutor, the District Attorney, relying on *Carlucci*, obtained a writ of mandamus ordering the reluctant judges to conduct trials without prosecutors. *See* Petition for Certiorari at 17-18 (discussing *Kottmeier v. Municipal Court*, 269 Cal. Rptr. 542 (Ct. App. 1990)).

Respondent does not dispute the various factual assertions in the petition, in particular petitioner's suggestion that the practice of conducting trials in traffic infraction cases in California is virtually universal and affects hundreds of thousands of California citizens every year. Such a marked and widespread departure from the normal allocation of authority in criminal trials should not continue without careful examination by this Court.

Wherefore, petitioner prays that a writ of certiorari issue to review the judgment of the Appellate Division of the Superior Court.

Respectfully submitted,

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